IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

AS.No. 847 of 1997(E)

OS.484/1993 of ADDL.SUB COURT, IRINJALAKUDA

.....

APPELLANTS/PLAINTIFFS:

---

1. JOSE.

2. ROSY W/O.THARAYIL JOSE.

3. THRESSIA AMMA @ SISMOL, D/O.THARAYIL JOSE.

4. JOHNY, S/O.THARAYIL JOSE

5. ALDRIN, -DO-

ALL ARE RESIDING AT THARAYIL HOUSE, MARATHAKARA, THRISSUR DT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

RESPONDENTS/DEFENDANTS:

---

1. R.JAGANATHAN S/O.RAMASWAMY GOUDER, RESIDING AT ZENGUNDAYIRAM MAIR ROAD, KARUR POST, TRICHY DT. TAMIL NADU.

2. P.SELVARAJ S/O.M.PALANISWAMY, RESIDING AT MARIKYAPURAM POST, MANJANAYAKAM VILLAGE, KULITHAI.

3. NATIONAL INSURANCE CO. LTD., BRANCH, THRISSUR.

R1 & R3 BY ADV. SRI.RAJAN P.KALIYATH
R2 BY ADV. SRI.P.VIJAYA BHANU
SRI.M.GEORGE THOMAS

THIS APPEAL SUITS HAVING COME UP FOR ADMISSION ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

A.S.No.847 of 1997

Dated, this the 14th day of September, 2007

JUDGMENT

Plaintiffs in O.S.No.484/1993 on the file of the Additional Sub Judge, Irinjalakuda are the appellants. They are heirs of late Shri George who was the owner of a tempo van bearing registration No.KER 7954. On 17.8.1991 the vehicle met with an accident. It was alleged that a goods vehicle bearing registration No.TDW 9769 driven by the second respondent and owned by the first respondent came in a rash or negligent manner and hit against the tempo van owned by late Shri George. It was averred that on account of the damages sustained to the tempo van Shri George had incurred expenses for repairing the vehicle. It was also averred that on account of non-plying of vehicle on road the owner sustained loss of income. Shri George died on 18.6.1992 and hence a suit was filed by his heirs for realisation of an amount of Rs.57,752.62 ps. with interest at the rate of 12% per annum from the respondents who are the owner, driver and insurer of the offending vehicle.

2. Respondents filed written statements denying their liability. Negligence alleged was denied. Court below found that damages caused to the tempo van on account of accident was a matter to be adjudicated by the Motor Accidents Claims Tribunal. Court below also found that the claim for loss of income on account of non-plying of the vehicle on road was not a matter which

can be considered by the Tribunal and that was a matter to be adjudicated by the Civil Court alone. Appellants have claimed Rs.12,000/- on account of the non-availability of the vehicle to ply on road. Brother of the deceased was examined. It was he who paid the repair charges. As rightly observed by the court below there was no specific averment in the plaint from what date to what date the vehicle was garaged.

3. Learned counsel appearing for the appellants has argued that the vehicle was re-inspected on 15.1.1992 which would conclusively show that at least for a period of five months the vehicle was out of operation. The mere fact that the re-inspection was conducted on 15.1.1992 does not mean that the vehicle was not road worthy till that date. Further what exactly was the loss sustained by the owner also was not established. PW1 had deposed that the average loss per day was Rs.100/-. To substantiate that contention there was only oral evidence. Trial court did not accept that oral evidence. Considering all aspects of the matter I do not find any reason to admit this appeal. There is no merit in the appeal and the same is only to be dismissed.

In the result, appeal is dismissed under Order IX Rule 11 of Civil Procedure Code.

K. PADMANABHAN NAIR,
JUDGE.

cks

K.PADMANABHAN NAIR, J.

A.S.No.847 of 1997

JUDGMENT

14th September, 2007.